

**Senate Bill No. 1605**

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Passed the Senate May 4, 2006

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*Secretary of the Senate*

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Passed the Assembly August 10, 2006

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2006, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Section 7104 of the Public Contract Code, relating to public works.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1605, Margett. Public contracts: public works.

Existing law requires any public works contract of a local public entity that involves digging trenches or other excavations that extend deeper than 4 feet below the surface contain a clause that provides: (1) that the contractor is required to notify the public entity of specified conditions concerning hazardous waste, subsurface or latent conditions, or unknown physical conditions, (2) that the public entity is required to promptly investigate the conditions and if it makes certain findings regarding the conditions, a change order shall be issued under the procedures described in the contract, and (3) that, as specified, in the event a dispute arises between the public entity and the contractor, the contractor shall not be excused from performance.

This bill would specify that the contractor notify in writing the local public entity of any subsurface or latent physical conditions that differ from the conditions indicated by information about the site made available to bidders prior to the deadline for submitting bids.

*The people of the State of California do enact as follows:*

SECTION 1. Section 7104 of the Public Contract Code is amended to read:

7104. Any public works contract of a local public entity which involves digging trenches or other excavations that extend deeper than four feet below the surface shall contain a clause which provides the following:

(a) That the contractor shall promptly, and before the following conditions are disturbed, notify the local public entity, in writing, of any:

(1) Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and

Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

(b) That the local public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the contract.

(c) That, in the event that a dispute arises between the local public entity and the contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, the contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

Approved \_\_\_\_\_, 2006

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*Governor*